



October 26, 1999

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR99-3023

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128683.

The Texas Department of Insurance (the "department") received a request for information regarding insurance company rate filings. You assert that release of the responsive information obtained from the Consumers County Mutual Insurance Company ("the company") implicates the proprietary interests of the company. The department has not taken a position regarding the application of any exception from disclosure provided under chapter 552 of the Government Code to this information. The department has submitted the subject information to our office for review.

Where a third party's privacy or property interest are implicated by a request for information, a governmental body may rely on the third party to establish that the information should be withheld under applicable exceptions intended to protect those interests. Gov't Code § 552.305; Open Records Decision No. 542 (1990). Pursuant to Government Code section 552.305, our office contacted the company and informed it of the request for information and the company's burden to assert arguments as to the application of any exception from disclosure to any responsive information.

In their letter to this office, dated August 26, 1999, representatives of the company contend that the "numerical guidelines, calculations, and factors used to adjust premiums by application of discounts, policy fees, surcharges and all other miscellaneous fees" are protected trade secrets or commercial or financial information under section 552.110 of the Government Code.

Section 552.110 protects: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. The Texas Supreme Court has adopted the definition of “trade secret” from the Restatement of Torts, section 757, which holds a “trade secret” to be:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958).

The following criteria determines if information constitutes a trade secret:

(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Restatement of Torts, *supra*; *see also* Open Records Decision No. 319 at 2 (1982).

This office will accept a claim that information is excepted from disclosure under the trade secret aspect of section 552.110 if a prima facie case is made that the information is a trade secret and no argument is submitted that rebuts that claim as a matter of law. Open Records Decision No. 552 (1990). The company alleges that it is substantially exempt from rate regulation and thus its survival in the market is dependent on a competitive rate structure. It also alleges that the subject rating factors are used to develop and maintain its rate structure and are the product of intense market and demographic studies, conducted at considerable expense. It further alleges that disclosure of this information would injure its

competitive position.

Based on these factual allegations and a review of the subject information, we find that the company has presented a prima facie case that this information constitutes a "formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it." As no one has submitted an argument that rebuts the claim as a matter of law, we conclude that the numerical guidelines, calculations, and factors used to adjust premiums by application of discounts, policy fees, surcharges and all other miscellaneous fees information that is contained in the records at issue must be withheld pursuant to section 552.110 of the Government Code.

We note that the same or similar information has previously been the subject of a request to the department and a ruling by this office. In Open Records Letter No. 99-1514(1999), this office ruled that the company had established that numerical guidelines, calculations, and factors used to adjust premiums by application of discounts, policy fees, surcharges and all other miscellaneous fees information in the company's requested rate filings were protected trade secret information under section 552.110. Please use that ruling and its markings with respect to what information could be withheld as trade secrets as a guide in withholding information in response to the instant request. Responsive information not found to be protected under section 552.110 must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 128683

Encl. Submitted documents

cc: Mr. Jeff Noon
Ameria's Low-Cost Insurance Agencies
2211 S. IH-35, Suite 100
Austin, Texas 78741
(w/o enclosures)